



# Federal Emergency Management Agency

Washington, D.C. 20472

AUG 10 1989

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[Redacted]  
Emergency Coordinator  
Central Intelligence Agency  
Office of Executive Director  
Washington, D.C. 20505

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Dear [Redacted]

Enclosed is the draft Defense Mobilization Order on Protection of Essential Resources and Facilities which was published in the Federal Register on August 7, 1989, for public comment. The comment period ends October 6, 1989.

The regulation provides planning guidance for the Federal departments and agencies to develop strategies, plans, and programs to provide for the security of essential facilities and resources on a priority basis, and to avoid or minimize disruptions of essential services during any national security emergency. It also includes criteria guidance for the Federal departments and agencies to assess on a priority basis the vulnerabilities of essential facilities and resources that would impact on the needs of national defense.

You may wish to share a copy of the document with your program management offices. We appreciate your efforts in implementing this vital national security emergency preparedness program. My point of contact for the program is Dr. Henry Hyatt at 202-646-3567.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. A. Moreland', is written over a circular stamp or seal.

Joseph A. Moreland  
Assistant Associate Director  
for Mobilization Preparedness

Enclosure

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****44 CFR Part 335**

RIN 3067-AB46

**Protection of Essential Resources and  
Facilities****AGENCY:** Federal Emergency  
Management Agency (FEMA).**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rulemaking proposes to add a new part 335 in Title 44 Code of Federal Regulations, Protection of Essential Resources and Facilities Guidance, Chapter I, Federal Emergency Management Agency, Subchapter E Preparedness. New part 335 responds to part 1 of Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy and which delegates to the Director the lead responsibility for coordinating and supporting the initiation, development, and implementation of national security emergency preparedness programs and plans among the Federal departments and agencies. This Part provides for the protection of essential resources and facilities which is part of the national security emergency preparedness policy and provides guidance to the Federal departments and agencies in the implementation of this policy.

**DATES:** Comments are requested and should be submitted in writing to the address listed below no later than October 6, 1989.

**ADDRESSES:** Submit written comments, in duplicate, on the proposed guidance, to the Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Henry M. Hyatt, Senior Physical Scientist, Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 619, 500 C Street SW., Washington, DC 20472, Telephone (202) 646-3567.

**SUPPLEMENTARY INFORMATION:** This proposed guidance is not a major rule

for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of \$100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This Part applies to Federal Government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and OMB implementing regulations 5 CFR part 1320.

The regulation in this Part provides guidance to Federal agencies which may or may not take an action which could be subject to environmental documentation requirements. The guidance has no environmental consequences and it is determined, under FEMA's regulation published in 44 CFR 10.8, that it is not necessary to prepare either an environmental assessment or an environmental impact statement.

In promulgating these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirements that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments. The problem dealt with in this Part is national in scope. In view of the joint Federal-State responsibility for civil defense, and FEMA's role under the Federal Civil Defense Act of 1950, as amended, the regulation in this Part is determined to conform FEMA assistance to Executive Order 12612.

**List of Subjects in 44 CFR Part 335**

National defense, National security emergency, Protection of essential resources and facilities.

Accordingly, Subchapter E, Chapter I, Title 44, Code of Federal Regulations, is proposed to be amended by adding a new part 335 as follows:

**PART 335—PROTECTION OF  
ESSENTIAL RESOURCES AND  
FACILITIES****Sec.**

- 335.1 Purpose.
- 335.2 Scope and applicability.
- 335.3 Definitions.
- 335.4 Policy.
- 335.5 Responsibilities.
- 335.6 Criteria.
- 335.7 Implementation.
- 335.8 Reporting.

**Authority:** National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.*; Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251 *et seq.*; E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; E.O. 10480 of August 14, 1953, 3 CFR 1949-53 Comp., p. 962; and E.O. 12656 of November 18, 1988, 53 FR 47491.

**§ 335.1 Purpose.**

This part:

(a) Provides policy guidance pursuant to the cited authority including the Defense Production Act of 1950, as amended; section 1-103 of Executive Order (E.O.) 12148, as amended, which includes functions that were vested under E.O. 11051; sections 104(f) and 204 of E.O. 12656, in the identification of facilities and resources, both government and private, essential to the national defense and national welfare.

(b) Provides criteria guidance for the Federal departments and agencies to assess on a priority basis the vulnerabilities of essential facilities and resources that would impact on the needs of national defense.

(c) Provides planning guidance for the Federal departments and agencies to develop strategies, plans, and programs to provide for the security of essential facilities and resources on a priority basis, and to avoid or minimize disruptions of essential services during any national security emergency.

**§ 335.2 Scope and applicability.**

(a) This order covers the protection of resources and facilities, both government and private, essential to the national defense and national welfare, and provides for the assessment of their vulnerability. The order also provides guidance for the development of strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national security emergency.

(b) This order applies to essential facilities and resources in the assigned areas of responsibility of Federal departments and agencies.

### § 335.3 Definitions.

(a) *Essential facilities.* Any factory, plant, building or structure used for manufacturing, production, processing, repairing, assembling, storing or distributing a product or components deemed essential to national security and a Federal agency mission, including any industrial asset nominated for inclusion in the Department of Defense Key Assets List in accordance with the selection criteria set forth in DOD Directive 5160.54 of 26 June 1989 (copy available from Records & Reference Branch, DOD/WHIS, Room 3A948 The Pentagon, Washington, DC 20301); any communication or computer facility or system; any energy source or distribution system; any air, rail, road or water transportation asset; any other infrastructure facility that is required to support an industrial asset listed in the DOD Key Assets list or a military facility; or to otherwise support DOD mobilization, deployment or sustainment.

(b) *Essential resources* are natural resources, construction, industrial production, human resources (including health resources, housing, public information, training and education), economic resources (fiscal and monetary systems) and infrastructure systems (transportation, energy, communications, data processing, water and agricultural production).

(c) *Essential facilities and resources protection* is the process used for the protection of essential resources and facilities from disruption by an event in a full spectrum of threats ranging from natural disasters to sabotage by groups or individuals whose actions are hostile to national security.

(d) *Facilities/Structures* means those Government-owned and/or privately-owned plants, mines, buildings (including buildings occupied in whole or in part by any Federal agency), materials, products, and processes, and those Government-provided and privately-provided services, which are of importance to defense mobilization, defense production, or the essential civilian economy and are located or provided in the United States or in the territories or possessions of the United States. This definition shall not extend to federally owned military posts, camps, stations, arsenals or other comparable facilities under the military command of the Department of Defense.

(e) *Mobilization* is the process of marshalling resources, both civil and

military, to respond to and manage a national security emergency.

(f) *National security emergency* is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States.

(g) *Physical security* means security against sabotage, espionage, and other hostile activity and other destructive acts and omissions, but excludes security attributable to operations of military defense or combat and excludes activities with respect to the dispersal and post-attack rehabilitation of facilities.

### § 335.4 Policy.

(a) It is the policy of the United States to have an emergency mobilization preparedness capability that shall ensure that Government at all levels, in partnership with the private sector and the American people, can respond decisively and effectively to any national security emergency with defense of the United States as the first priority.

(b) It is the national security emergency preparedness policy to develop and promote the security and protection of essential facilities and resources within the United States and in U.S. territories and possessions essential to the national defense by providing to the owners or managers of such assets appropriate advice, guidance, and planning assistance concerning the application of physical security and emergency preparedness measures. The purpose of such assistance is to encourage owners and civil law enforcement agencies to protect facilities and resources from sabotage, espionage, and other hostile or destructive acts, and to minimize the effect of attack damage.

(c) Physical security of facilities and resources is an inherent responsibility of ownership. The primary responsibility for the physical security of any privately-owned assets, federally-owned assets under the control of any Federal department or agency or of any contractor, or assets owned by any state or political subdivision of any State is with that entity. The primary responsibility for interdiction is with Federal, state and local law enforcement authorities.

(d) The Federal Government does not have the primary responsibility for the physical security of privately-owned facilities or of facilities owned by any State or political subdivision of any State, or any inter-governmental body.

(e) It is the policy of the United States to identify those essential facilities and

resources the partial or complete loss of which would have an immediate and severe impact on the national defense; to assess the vulnerability of these facilities and resources; and to provide for their protection on a priority basis in the most cost effective and systematic manner possible.

### § 335.5 Responsibilities.

(a) *Departments and Agencies.* The head of each Federal department and agency shall:

(1) Identify facilities and resources on a priority basis, both private and government, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources, and to avoid or minimize disruptions of essential services during any national emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources to essential military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies;

(4) Where appropriate, furnish advice, through developed and operational communication channels, to the management or owner of a subject facility or resource with respect to developing and administering the physical security programs;

(5) In consultation with the management or owner of a facility or resource, or in cooperation with other qualified technical agencies and established advisory committees, assist in the development of standard security criteria for facilities or resources; and

(6) Supervise, when appropriate, the application of physical security measures and appraise the adequacy and efficiency of the measures taken.

(b) The Department of Justice shall support the heads of Federal departments and agencies, State and local governments, and the private sector in the development of plans and programs to physically protect essential resources and facilities. This responsibility has been delegated to the Federal Bureau of Investigation for implementation under Executive Order 12656.

(c) The Federal Emergency Management Agency (FEMA) shall:

(1) Coordinate and support the initiation, development, and implementation of plans for the protection of essential facilities and

resources within the assigned areas of responsibility of Federal departments and agencies as part of the national security emergency preparedness policy;

(2) Assist the Department of Justice and other Federal departments and agencies in the interagency activity of identifying and assessing the relative importance of various facilities and resources to military and essential civilian needs and to integrate preparedness and response strategies and procedures; and

(3) As coordinator for national security emergency preparedness policy, report to the President and the National Security Council concerning the status of the essential facilities and resource protection programs of the Federal departments and agencies and furnish such recommendations as may be appropriate.

#### § 335.6 Criteria.

(a) The significance of essential facilities and resources to Federal departments and agencies or to the owners of such facilities or resources, is determined by applying the following criteria:

(1) An asset whose loss would halt or unacceptably delay mobilization deployment and sustainability efforts; and

(2) An asset that produces critical items whose loss would halt or delay unacceptably, mobilization, deployment or sustainment efforts.

(b) These criteria in turn depend upon the following factors:

(1) The importance of the service or product it provides or produces;

(2) The dependence of the population or industry on the product;

(3) The cost of replacement;

(4) The replacement time; and

(5) The availability of substitutes.

(c) Priority selection categories. An essential facility or resource shall be assigned to one of the following categories:

(1) *Category one.* An essential facility or resource which has no replacement, substitute, or alternative. The partial or complete loss of such facility or resource, would have an immediate and adverse impact on the national defense.

(2) *Category two.* An essential facility or resource for which alternatives are available, but such alternatives are required to meet other needs of a national security emergency.

#### § 335.7 Implementation.

(a) Federal departments and agencies with the support of the Department of Justice and the owners of the facilities and resources will provide the actual identification of potential or actively

disruptive vulnerabilities, and conduct analyses of their respective facilities and resources.

(b) Federal departments and agencies, within their assigned areas of responsibility, shall:

(1) Identify facilities and resources, both government and private, essential to the national defense and national welfare, and assess their vulnerabilities and develop strategies, plans, and programs to provide for the security of such facilities and resources on a priority basis, and to avoid or minimize disruptions of essential services during any national security emergency;

(2) Participate in interagency activities to assess the relative importance of various facilities and resources essential to military and civilian needs and to integrate preparedness and response strategies and procedures;

(3) Maintain a capability to assess promptly the effect of attack and other disruptions during national security emergencies. (Reference: Section 204; E.O. 12656);

(4) Use their essential facilities and resource plans to choose their individual responses and strategies appropriate to the crisis or emergency situation.

(5) Develop strategies, as appropriate, to aid decision makers in the implementation of their essential facilities and resources protection programs.

(c) Plans and strategies will be coordinated with FEMA by the Federal departments and agencies under the aegis of the National Security Council, to assist them in developing Federal Standards for categorizing their essential facilities and resources; prioritizing their protection; and in understanding the need to assure the availability of essential facilities and resources in a national security emergency.

#### § 335.8 Reporting.

In carrying out its responsibility of periodically reporting to the President and the National Security Council on the implementation of the national security emergency preparedness policy, the departments and agencies shall cooperate with FEMA to the extent appropriate, in compiling, evaluating, and exchanging data on the essential facilities and resources protection programs.

Dated: July 28, 1989.

Robert H. Morris,  
Acting Director, Federal Emergency  
Management Agency.

[FR Doc. 89-18395 Filed 8-4-89; 8:45 am]

BILLING CODE 6710-01-M